Severance Tool Industries, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–29218

February 28, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On June 29, 1990, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the exceptions. The General Counsel filed cross-exceptions and a supporting brief and the Respondent filed an answering brief to the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

We agree with the judge that the Respondent violated Section 8(a)(1) by unlawfully suspending and discharging Anthony Van Deventer,[1] and by discriminatorily enforcing its policy on the use of the Company's bulletin boards.[2] We also agree that the Respondent violated Section 8(a)(5) of the Act when, after the Union had been elected as the employees' bargaining representative, the Respondent unilaterally changed its policy regarding the employees' use of its bulletin boards. We find merit, however, in the General Counsel's cross-exception to the judge's finding with respect to a statement made by former Supervisor Randy Snyder.

The judge found that Randy Snyder threatened employees with more onerous working conditions and stricter enforcement of company policy because they had signed up for the Union's organizing committee. The judge also found, inter alia, that, subsequent to this threat, the Respondent posted a notice to all employees that unequivocally and effectively disavowed any statements alleged to have been made by Snyder. The judge found that Snyder's statement amounted to an 8(a)(1) violation, but due to the Respondent's reaction to the incident, including its repudiation, and Snyder's subsequent departure from the Respondent, Snyder's actions became de minimis ''without the need for a formal finding of a violation of the Act and an order to cease and desist.'' We disagree. We find that, based on the criteria set forth in *Passavant Memorial Area Hospital*,[3] the Respondent undermined whatever legal effectiveness its prior repudiation had by subsequently unlawfully suspending and discharging Anthony Van Deventer, and by later discriminatorily applying and unilaterally changing its bulletin boards' usage policies. Thus, in *Passavant*, one of the criteria listed for an effective repudiation is that there be ''no proscribed conduct on the employer's part after the publication [citation omitted].'' But subsequent proscribed conduct did occur here. Therefore, in agreement with the General Counsel, we conclude that the Respondent violated the Act by Snyder's threat and that a cease-and-desist order is warranted here for that violation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Severance Tool Industries, Inc., Saginaw, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Add the following as paragraph 1(a) and reletter subsequent paragraphs.

''(a) Threatening employees with more onerous working conditions and stricter enforcement of company policies because they engaged in protected and concerted activity.''

2. Substitute the attached notice for that of the administrative law judge.

[3] 237 NLRB 138 (1978).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with more onerous working conditions and stricter enforcement of company policy because they engage in protected and concerted activity.

WE WILL NOT discharge, suspend, or otherwise coerce our employees because they engage in protected concerted activities.

[1] We find it unnecessary to pass on the General Counsel's cross-exception that by the Respondent's suspension and discharge of Van Deventer it also violated Sec. 8(a)(3) because the remedy of reinstatement and backpay for Van Deventer would be the same.

[2] Member Oviatt agrees with the judge that the Respondent's discharge of employee Van Deventer violated Sec. 8(a)(1) of the Act. In so doing, Member Oviatt emphasizes that he does not condone Van Deventer's manner in protesting the vacation pay problem to the Respondent. Member Oviatt nonetheless agrees that Van Deventer's manner was not so opprobrious as to lose the protections of the Act.

WE WILL NOT maintain or enforce a policy which discriminatorily prohibits our employees from posting union literature on our bulletin boards.

WE WILL NOT unilaterally and without notifying the Union change our policy regarding the employees' use of the bulletin boards.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Anthony Van Deventer immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL rescind our unilateral change in policy of April 1989 regarding our employees' use of the bulletin boards and, on request, meet with the Union and bargain in good faith with the Union as the exclusive bargaining representative of unit employees concerning wages, hours, and other terms and conditions of employment, including our policy regarding the employees' use of the bulletin boards.

WE WILL remove from our files any reference to our suspension and discharge of Anthony Van Deventer and WE WILL notify him in writing that this has been done and that evidence of the suspension and discharge will not be used against him in any way.

SEVERANCE TOOL INDUSTRIES, INC.

Jerome Schmidt, Esq., for the General Counsel.
Robert A. Kendrick, Esq., of Saginaw, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried at Saginaw, Michigan, on December 4 and 5, 1989, based on a complaint dated June 19, 1989. The original charge, filed on May 1, 1989, by International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, was amended on May 17 and on June 1, 1989. The complaint charges the Respondent, Severance Tool Industries, Inc. (the Company) with violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), alleging, in substance, that the Respondent had (a) threatened an employee because of his union support, (b) discriminatorily enforced its policy regarding the employees' use of the bulletin boards, (c) unilaterally changed its policy with regard to the bulletin board, and (d) suspended and thereafter discharged its employee Anthony Van Deventer because of his protected concerted activities and for his union activity.

The Company's answer to the complaint admitted the jurisdictional allegations in the complaint and denied the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Severance Tool Industries, Inc. is a Michigan corporation engaged in the manufacture and nonretail marketing of cutting tools at its location 3790 Orange Street, Saginaw, Michigan. With purchases of goods and materials in excess of $50,000 directly from points outside the State of Michigan, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Its approximately 75 production and maintenance employees are supervised by a hierarchy of managers and supervisors, including Robert Severance, president; James Shalaty, executive vice president; John Pease, production control manager; Archie Clauss, foreman; and Randy Snyder, foreman. Snyder returned to a nonsupervisory position on February 6, 1989, and left the Company effective February 24, 1989.

The Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO is admittedly a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS

The UAW commenced an organizational campaign at Respondent's facility in early 1989. The first organizational meeting held on January 6, 1989, was attended by about 15 of the Company's production employees. By letter of January 23, 1989, addressed to the president of the Company, Robert Severance, the Union disclosed the names of the employees comprising the organizing committee, including Anthony Van Deventer (G.C. Exh. 3). Van Deventer obtained 34 of the 43 signed authorization cards. Severance Tool Industries opposed the Union's campaign and posted a letter dated January 25, 1989, addressed to all employees in which it discouraged the employees from signing union cards and getting involved with the UAW. The letter states in its concluding sentences (G.C. Exh. 43):

> In fact, the UAW may end up hurting you, your families and the business. I urge you not to get involved with the UAW or a situation that could quickly turn against you.

By letter dated February 8, 1989, the Union responded to a company letter of February 6, 1989, in an attempt to refute some of the campaign rhetoric communicated to the employees (G.C. Exh. 25). In a memorandum dated March 9, 1989, the Company again urged the employees to vote ''No'' at the election. On March 16, 1989, an election was held where 74 votes were counted with 49 for the UAW and 23 against it, while 2 votes were challenged (G.C. Exh. 8). The Union was certified on March 24, 1989, as the bargaining representative for the following employee unit (G.C. Exh. 9):

> All full-time and regular part-time production and maintenance employees, including stockroom clerks, inspectors, production control employees, tool processors, machinists, truck drivers, heat treat and maintenance employees, employed by Respondent at its facility located at 3790 Orange Street, Saginaw, Michigan; but excluding all office clerical employees, sales employees, confidential employees, guards and supervisors as defined in the Act.

By letter of April 13, 1989, the Union notified the Company of the results of the election for the unit chairperson and the composition of the bargaining committee. The four-member bargaining committee included Anthony Van Deventer (G.C. Exh. 23).

The Respondent's conduct during and after the union campaign showed its hostility towards the Union, as examplified by the following incidents. Early in the campaign, Supervisor Randy Snyder was observed by several employees as he threw a union letter on a workbench and stated: ''All of you guys on second shift putting your name on the organizing committee makes me look awful bad. You better plan on workin' your asses off and stayin' in your work area'' (Tr. 126, 140).

According to the testimony of a former supervisor, Richard Akright, Robert Severance, Respondent's president, told him to get rid of Paul Hausen, an employee, because he was a troublemaker. When Akright expressed his disagreement with Severance's criticism, Severance replied, ''how do you explain his union activity'' (Tr. 17). According to Akright, Severance also said that he would fight the Union ''at all cost'' and ''could always relocate and just move down south'' (Tr. 20).

Several employees testified about Respondent's discriminatory policy regarding the bulletin boards. Employees were permitted to use the Company's bulletin board for personal notices, such as social or church functions and items for sale. However, notices by and about the Union were quickly removed by the Respondent or simply disallowed. The General Counsel argues that the Respondent changed its policy about the employees' use of the bulletin board without any negotiation with the Union.

On March 17, 1989, the local paper reported the union election at the plant. Among other statements, President Severance was quoted to say that he ''was dismayed that we had a union'' (G.C. Exh. 32). Severance testified that it was an accurate statement (Tr. 196).

Shortly after an incident in the office of the company president on April 25, 1989, the Respondent suspended and discharged one of the most active union activists, Anthony Van Deventer. The Respondent maintains that the employee was discharged for insubordination (G.C. Exh. 17). The General Counsel submits that the discharge occurred as a result of Van Deventer's protected concerted activity and his union activity.

The Respondent's conduct relating to Supervisor Snyder's threat and its policy relating to the use of the bulletin boards, as well as the discharge of Van Deventer, are the subject of the specific alleations in the complaint.

The Alleged Threat. On January 25, 1989, Supervisor Randy Snyder noticed a union letter posted on the bulletin board listing the names of several employees on the organizing committee. Michael Crapo, an employee under the supervision of Snyder at that time, testified that Snyder tossed the letter on the workbench and said, ''All of you guys on second shift putting your name on the organizing committee makes me look awful bad. You better plan on workin' your asses off and stayin' in your work area'' (Tr. 126). Employee Michael Holvey corroborated the incident and immediately prepared a written note about it (Tr. 140–144); (G.C. Exh. 28). Snyder did not testify about the incident. In agreement with the General Counsel, I find that Snyder's statement was a threat of more onerous working conditions and stricter enforcement of company policy because of the employees' union support. Such threats interfere with the employees' rights under Section 7 of the Act and violate Section 8(a)(1) of the Act.

The Respondent argues that it disciplined Snyder and sent him home following the incident in order to investigate the matter. Thereafter, Snyder left his supervisory position in early February and ultimately left his employ with the Company. Significantly, the Respondent posted a ''Notice To All Employees'' on March 22, 1989, which, among other things, states as follows (G.C. Exh. 12):

> With regard to statements alleged to have been made by Randy Snyder, former supervisory employee of Severance Tool Industries, where he allegedly threatened Severance employees with harsher working conditions because of employees' union activities, Severance Tool Industries disavows any such statement and assures employees that, if made, it was not made with the sanction, knowledge or permission of Severance Tool Management.
>
> A majority of Severance employees have now indicated their desire for UAW representation through the NLRB secret ballot election process. We repeat again what we said last Friday in our letter to employees: Severance Tool Industries will not discriminate against any employee on the basis of his or her union activities or support.

Although the record shows that Snyder was placed on a paid leave of absence while the Respondent conducted a brief investigation of the matter, Snyder's demotion was apparently unrelated to this incident. John Pease, Respondent's plant manager, testified that he investigated the matter but ''couldn't substantiate those rumors'' (Tr. 285). Pease also testified that Snyder asked to be relieved of his supervisory responsibility without indicating his reasons. Snyder subsequently left the Company. While this development may have been coincidental, it is clear that the seriousness and any lasting effect of the threat was thereby diminished. The Respondent's written disavowal was unequivocal and effective. To be sure the record does not show how long the notice was posted or how many employees read it, but the record is clear that the notice was effectively communicated to the employee who was the target of the threat. Employee Holvey testified that he heard that the Company disavowed Snyder's statements (Tr. 146).

In view of the Company's reaction to the incident—the investigation of Snyder, his leave of absence, and the written repudiation—and considering the departure of Snyder as a supervisor and as an employee, I find that the incident be-

came de minimis without the need for a formal finding of a violation of the Act and an order to cease and desist.

The Discharge of Anthony Van Deventer. On April 25, 1989, after meeting with Robert Severance, Respondent's president, during the Company's ''speak easy program'' Anthony Van Deventer was suspended for 3 days and effectively discharged on April 28, 1989 (G.C. Exh. 29). Since his employment on August 21, 1988, as a tool changer and grinder, Van Deventer had been a satisfactory employee as shown by his ''performance appraisal forms.'' They show on a scale of 0 to 4, that he received points in various categories averaging 2.5 and 3 (G.C. Exhs. 19–21). His most recent appraisal, dated April 24, 1989, only 1 day prior to the incident on April 25, also shows a good performance record (G.C. Exh. 19). He was one of the most active union supporters. He attended the Union's first organizational meeting on January 6, 1989, and he signed a statement on January 12, 1989, consenting to the Union's use of his name in a letter to the Company advising it that he was on the organizing committee. His name appeared with several other employees' name on a letter of January 23, 1989, listing the Union's organizing committee (G.C. Exhs. 2, 3). He distributed union authorization cards and was responsible for posting many union posters on the Company's bulletin boards (Tr. 31, 34–37). He was listed on a letter, dated April 13, 1989, as one of the employees who was elected to the bargaining committee (G.C. Exh. 23), and appeared as a day-shift representative on a notice, dated April 19, 1989, entitled ''Membership Meeting'' (G.C. Exh. 24). During the March 16 election, Van Deventer functioned as the Union's observer. The Company was obviously aware that this employee was one of the most active union supporters (Tr. 39–40, 210–211).

On April 4, 1989, Paul Hausen, an employee, talked to Van Deventer about the amount of vacation pay. This prompted Van Deventer to inquire of John Pease whether employees were entitled to 6 percent of their first year's wages as vacation pay. Pease, according to Van Deventer, acknowledged that first-year employees were entitled to 2 percent in addition to 4 percent of their first year's pay (Tr. 53–54). On April 18, 1989, Kevin Harns, another employee, approached Van Deventer stating that his vacation pay reflected only 4 percent of his wages. On April 19, 1989, Van Deventer met with Pease to discuss Harns' complaint. Pease simply referred to the Company's handbook providing for 4-percent vacation pay. Van Deventer then attempted to meet with Vice President Shalaty to resolve this issue, but was unsuccessful. Van Deventer finally used the Company's ''Speak Easy Program.'' He completed a form, dated April 21, 1989, in which he explained that Paul Hausen and he were under the impression that their vacation pay would amount to 2 percent plus 4 percent of their gross pay and that he wanted ''an explanation of this problem'' (G.C. Exh. 15). Severance agreed to meet with Van Deventer on April 25, 1989, at 8:55 a.m. That meeting lasted approximately 5 or 6 minutes.

Van Deventer remembered that Severance received him in his office holding a manila folder with his name on it and recalls the episode as follows. Severance asked him about his problem. Van Deventer replied that Hausen and he expected a higher percentage in vacation pay and explained his prior conversation with John Pease. When Van Deventer suggested that he could call in Hausen as a witness, Severance said that the meeting concerned only him and not Hausen. Severance then referred to the employee handbook saying that he did not understand what the confusion was. Severance also said that he had known Pease for 12 years and Van Deventer for only 1 year. When he replied that Severance had only known him since the organizing drive, Severance became a little upset and raised his voice a little, saying: ''As far as I am concerned, this conversation is over.'' Van Deventer told Severance that he would report to the membership the Company's promise of a portion of vacation pay and the subsequent denial of it; he also tried to complain about his performance evaluation. At that point, Severance told Van Deventer to leave his office. Van Deventer left the office and on his way out said: ''Son of a bitch'' (Tr. 63–65). Van Deventer denied slamming the door on his way out or raising his voice during the meeting.

Severance recalled the episode somewhat differently. He testified as follows (Tr. 191–193):

> So, I moved around the desk and asked Anthony what his problem was. He said, ''Paul Hausen and I have a problem and we want to discuss it.'' I said, ''Well, Anthony, I cannot discuss Paul Hausen's problem with you. I can only discuss your problem. . . .'' He started telling me that he had been promised a 2 percent and then another 4 percent vacation pay by John Pease. I told him I didn't understand how that could happen because you had to work a whole year in order to get a gross pay amount so you could figure 2 percent on it. . . . He told me that John Pease had promised him that. . . . I went around my desk and I opened a drawer, and brought out a handbook and brought it around, and started to show it to him. That's when he said, ''Oh, come on, Bob,'' and he started yelling at me. He was telling me that I didn't trust him and I didn't believe him . . . and I didn't believe anything that the employees said. When he started telling me things like that I said, ''Well, Anthony, this discussion is over. I don't like to be yelled at in my office and there is nothing more to say. If that's the way it is you can leave.'' He said, ''Well, I want to talk to you about my evaluation.'' I said, ''No, Anthony. We only discuss one subject at a time. If you want to come and talk about your evaluation at another time, that's all right.'' And then he got real angry and I said, ''Anthony, I asked you not to yell in my office. Now, please, leave. We are through with our discussion.'' He went over and opened the door and banged it back against the wall. He said, ''I'm going to tell everybody what your true colors are and plaster it all over the place,'' and with that he stormed out of my office.

Severance testified that he did not hear the exclamation, ''son of a bitch'' and explained that he decided to fire Van Deventer not because of his union involvement, but because ''he was yelling at [him] and he was threatening to tell everybody what the company's true colors were . . . [and] that he was going to plaster everything all over the walls'' (Tr. 194). Severance further testified that he consulted with Pease and Shalaty prior to his decision to fire Van Deventer and that the employee's ''belligerent attitude'' towards him in his

office and the statement ''son of a bitch'' which had been reported to him were his reasons for the discharge (Tr. 217).

Shalaty testified that he witnessed the episode because his office is located next to that of Severance. He heard the voice of Van Deventer yelling for some time in Severance's office, and as the door flung open he heard the remark, ''he was going to plaster the walls with something that would reveal the true nature of his being'' and the term ''son of a bitch.'' Shalaty explained the decision to fire Van Deventer for the following reason (Tr. 171):

> Yes he acted in an intimidating and extremely disrespectful manner to the President. He threatened to discredit his personal reputation and he called him a ''son-of-a-bitch.''

Pat Ortega, Respondent's personnel coordinator, testified that she happened to walk past Severance's office on that morning and was surprised to hear excessively loud talking. She learned from the switchboard operator that Van Deventer was in that office. She could not overhear what was said because she continued walking by the office.

The manager of the metals division, Gilbert Bradshaw, testified that his office is about 15 feet from Severance's door. He ''heard a little commotion when the door swung open'' and when Van Deventer walked past his door he heard ''You son-of-a-bitch'' (Tr. 319).

In view of the consistent and credible testimony of Respondent's witnesses, I credit Severance's recollection of the episode and find that Van Deventer[1] raised his voice in a disrespectful manner in Severance's office, and walked out of the office making a statement to the effect that he would post on the Company's walls his version of the vacation pay controversy. He also said ''son of a bitch'' after he had left the office, although it is not clear whether the term was merely used as a general curse or as a defamatory remark of the Company's president.[2] I also credit the Respondent's consistent testimony that the Respondent discharged the employee solely as a result of this episode. Had the Respondent intended to find a pretext to rid itself of a persistent union activist, it would not likely have given him an acceptable or good performance rating only 1 day before this event. To be sure, the record reflects Respondent's open antiunion animus. However, the record does not reveal a deceitful and plotting respondent. To the contrary, Severance's testimony was straightforward without any apparent attempt to overstate the incident. He and Shalaty, Respondent's two highest executives, testified credibly and consistently that Van Deventer was discharged for his conduct during the April 25 episode, which the Respondent considered to be insubordinate, disrespectful, and belligerent. Severance, who maintains a religious atmosphere at the plant, was obviously taken aback by this employee's aggressive and defiant outburst.

Nevertheless, the record is also clear that Van Deventer's actions in protesting the vacation pay issue constituted protected concerted activity. Having been elected a member of the Union's bargaining committee, he assumed a certain representative status among the employees; moreover, it is uncontroverted that the vacation pay issue was the concern of his fellow employees. Even though the ''Speak Easy Program'' may have been intended by the Respondent to provide a forum for individual meetings, it is clear that Van Deventer, having failed to clarify the issue with Pease, used the procedure as a last resort to resolve the controversy on behalf of other employees. Indeed, as a result of this meeting, the Respondent issued a memorandum to all employees clarifying the vacation pay policy (G.C. Exh. 33). One of the reasons for the discharge was Van Deventer's statement to Severance that he intended to inform the employees of the Company's ''true colors.'' Van Deventer's conduct clearly constituted concerted activity. *Pacific Mutual Insurance Co*., 284 NLRB 163 (1987). The record further shows that Van Deventer's conduct during the meeting was protected by Section 7 of the Act, and that the evidence of disrespect, rudeness, and the use of vulgar language was insufficient to deny him the protection of the Act. It is well established that a ''certain amount of salty language and defiance'' must be tolerated during such confrontations. *NLRB v. Chelsea Laboratories*, 825 F.2d 680, 683 (2d Cir. 1987); *Syn-Tech Windows Systems*, 294 NLRB 791 (1989). Even though the Respondent characterized Van Deventer's conduct as insubordinate, belligerent, and threatening, the record only supports a finding of disrespectful, rude, and defiant demeanor and the use of a vulgar word. Under these circumstances and in the absence of any threats of violence, actual insubordination, or acts of violence, it is clear that the Respondent overreacted and thereby violated Section 8(a)(1) of the Act.

The Company's Bulletin Boards. The complaint alleges that the Respondent enforced its policy regarding the posting of literature on the Company's bulletin boards in a discriminatory fashion and unilaterally changed its policy without bargaining with the Union. The record shows that the Respondent had a policy requiring prior approval of the plant manager for items posted on the bulletin boards.[3] However, the policy was not enforced with respect to personal notices such as items for sale. Employees testified that they put notices on the bulletin board without prior approval (Tr. 48, 132, 135). Employee James Yearta testified that he saw notices for ''fish fry and the church deals and dances'' and items for sale such as a ''quad runner,'' a type of recreational vehicle (Tr. 114). Michael Crapo testified that he observed postings on the bulletin boards like ''things for sale, a wedding invitation'' (Tr. 130). Brian Senn, an employee, similarly recalled seeing ''signs for fish frys, eggs for sale [and] . . . a wedding invitation'' (Tr. 130). Michael Holvey and Paul Hausen also saw these postings (Tr. 145, 154).

Union notices, however, were removed from the bulletin boards by company officials. Dennis Harns observed John Pease take down union notices in January 1989 (Tr. 162–64.) According to Harns, Pease did not remove personal notices from the bulletin boards. Employee Brian Bolt observed the same incident where Pease meticulously removed several union posters while ignoring other personal notices (Tr. 224). Yearta testified that on April 19 he sought the approval from John Pease to post a union document. Pease reviewed the material and said that he would consult with Shalaty. Pease

[1] Van Deventer impressed me as a somewhat arrogant, aggressive, and persistent individual who would not hesitate to act in a defiant and disrespectful manner towards his superiors.

[2] I do not credit Bradshaw's recollection of the use of that term with the prefix ''you.''

[3] The handbook received as G.C. Exh. 4 is missing in the exhibit file.

returned later and said that Shalaty had denied the request (Tr. 113–114). Pease also told Yearta that Respondent's policy was to disallow any union postings (Tr. 116). Pease admitted removing union literature from the bulletin boards but could not remember whether he also removed a personal notice. He stated that the union material was posted without prior permission (Tr. 273–274).

In short, the record shows that the Respondent generally permitted employees to use the bulletin board for personal notices, but removed union-related notices or refused to give prior approval for union material.[4] Respondent's discriminatory enforcement of its policy prohibiting the posting of union-related material on its bulletin boards violates Section 8(a)(1) of the Act. *St. Anthony's Hospital*, 292 NLRB 1304 (1989).

The record is also clear that the Respondent removed the old bulletin boards one day in April 1989, ''replacing them with glassed-in bulletin boards immediately that same day'' (Tr. 50, 117). The glass-encased bulletin boards were locked, and employees were prevented from using them for any purpose without the Company's approval. This constituted a change in policy because the employer had tolerated the posting of personal notices prior to that. Because the Union had been selected as the employees' exclusive bargaining representative as of March 24, 1989, Respondent's actions in this regard without notifying the Union or offering to bargain with it, constituted a unilateral change in policy. I, accordingly, find that the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. Severance Tool Industries, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By suspending and discharging Anthony Van Deventer because of his protected concerted activities, the Respondent violated Section 8(a)(1) of the Act.

3. By discriminatorily prohibiting employees from posting union literature on the Company's bulletin boards, the Respondent violated Section 8(a)(1) of the Act.

4. By unilaterally and without notifying and bargaining with the Union changing its policy regarding the employees' use of the bulletin boards, the Respondent violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

On concluding that the Respondent has engaged in certain unfair labor practices, I find it necessary to recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. Having unlawfully discharged Anthony Van Deventer, the Respondent shall offer him reinstatement and make him whole for lost earnings and other benefits computed on a quarterly basis from the date of discharge to the date of a proper offer of reinstatement, less net interim earnings in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Severance Tool Industries, Inc., Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, suspending, or otherwise coercing employees because they engage in protected concerted activities.

(b) Maintaining or enforcing a policy that discriminatorily prohibits employees from posting union literature on its bulletin boards.

(c) Unilaterally and without notifying the Union changing its policy regarding the employees' use of the bulletin boards.

(d) Failing to notify the Union or affording the Union an opportunity to bargain with it as the exclusive bargaining representative of the employees in the following unit:

> All full-time and regular part-time production and maintenance employees, including stockroom clerks, inspectors, production control employees, tool processors, machinist, truck drivers, heat treat and maintenance employees, employed by Respondent at its facility located at 3790 Orange Street, Saginaw, Michigan; but excluding all office clerical employees, sales employees, confidential employees, guards and supervisors as defined in the Act

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Anthony Van Deventer immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge of Anthony Van Deventer and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Rescind its unlawful change in policy of April 1989 regarding the employees' use of the bulletin boards and, on request, meet with the Union and bargain in good faith with the Union as the exclusive bargaining representative of the employees in the unit concerning wages, hours, and other terms and conditions of employment, including its policy regarding the employees' use of the bulletin boards.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[4] In an effort to show consistency, Supervisor Clauss instructed Senn in February 1989 to remove a notice for sale (Tr. 136). But this was an isolated instance.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Post at its Saginaw, Michigan facility copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''